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OVERVIEW OF *BARBARA TECHNOLOGIES v. STATE FARM LLOYDS*
No. 17-0640
Supreme Court of Texas

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On June 28, 2019, the Texas Supreme Court rendered its decision in *Barbara Technologies Corp. v. State Farm Lloyds*, No. 17-0640, 2019 Tex. LEXIS 687, at *4 (June 28, 2019). The majority opinion can be found here; Justice Boyd's concurrence in part and dissent in part, here; and Justice Hecht's dissent, here. The decision provides needed clarity for both insurers and policyholders as to the legal effect of an appraisal award on claims seeking damages under the Texas Prompt Payment of Claims Act (TPPCA), TEX. INS. CODE §§ 542.051 *et seq.* This paper provides an overview and analysis of the decision, as well as a discussion of the potential legal and practical consequences.

I. The Court's decision: a rooftop view

A. Split decision: neither party got what it was asking for.

The Court's holding was largely a split decision: neither our firm's client, Barbara Tech, nor State Farm got everything they were asking for from the Court.

The Court held that an insurer's payment of an appraisal award does not, as a matter of law, absolve the insurer of liability under the TPPCA. In recent years, courts have misapplied the *Breshears* line of cases that found an appraisal award absolves an insurer of any liability for violations of the TPPCA that took place prior to or during the appraisal process. *See Breshears v. State Farm Lloyds*, 155 S.W.3d 340, 343 (Tex. App.—Corpus Christi—Edinburg 2004, pet. denied) (mem. op.). That opinion can be found here. This line of cases resulted in an imbalance in the handling of insurance recovery matters in Texas. Under the *Breshears* line of cases, insurers frequently utilized the appraisal process as a vehicle to delay and avoid liability regardless of the extent of the statutory violation. *Barbara Technologies* should end this practice.

But the Court also rejected Barbara Tech's argument that an insurer's payment of an appraisal award constitutes an acceptance of liability, making it strictly liable for statutory penalties under the TPPCA. Barbara Tech had argued that, under *Graber v. State Farm Lloyds,* State Farm took a

risk that it would later be subject to TPPCA damages when it rejected the claim. *Barbara Techs. Corp.* 2019 Tex. LEXIS 687 at *29.

Instead of adopting a strict liability standard, the Court concluded, "that payment of an appraisal award on a rejected claim does not subject the insurer to prompt pay damages under Section 542.060 unless and until the insurer either accepts liability under the policy or is adjudicated liable." The payment in this case, the Court found, was neither an "acceptance" nor an "adjudication" of liability.

So the import of the decision can be distilled to two key points: A policyholder may recover damages under the TPPCA after an appraisal award, and the cases finding otherwise are no longer good law. But by the same token, in order to recover such damages, the insurer's liability for the claim must either be accepted or adjudicated. By threading the needle this way, the Court clearly sought to correct the *Breshears* imbalance, but to do so in a manner that would not incentivize litigation.

B. The *Barbara Technologies* factual and procedural background

An understanding of the factual background and sequence of events in *Barbara Technologies* is key to understanding the holdings in the case.

Barbara Tech owned a commercial property in San Antonio that suffered wind and hail damage in March of 2013. The timeline after that occurred as follows:

- **October 17, 2013:** Barbara Tech filed its claim with State Farm
- **November 4, 2013:** State Farm denied the claim, stating damages fell within the $5,000 deductible
- **March 4, 2014:** State Farm, per Barbara Tech's request, conducted another inspection, finding no additional damage
- **July 14, 2014:** Barbara Tech sued State Farm, alleging claims under Section 541 and 542 of the Texas Insurance Code, breach of contract, and other common law and statutory claims
- **January 9, 2015:** State Farm invoked appraisal
- **August 18, 2015:** Appraisers agreed to an appraisal value of $195,345.63
- **August 25, 2015:** State Farm pays award in full

Shortly thereafter, with the appraisal award having been fully paid, Barbara Tech nonsuited all of its claims *except* those under the TPPCA (Section 542). Barbara Tech moved for summary judgment, arguing State Farm violated the TPPCA by failing to pay the claim within 60 days, as required by the TPPCA, and therefore owed damages under the TPPCA. State Farm filed a cross-motion for summary judgment, asserting it did not violate the TPPCA as a matter of law because it timely paid the appraisal award and was not liable under the policy.

The trial court denied Barbara Tech's summary judgment motion and granted summary judgment for State Farm. The Fourth Court of Appeals affirmed the trial court's judgment; and, following *Breshears* and *Garcia v State Farm Lloyds*, 514 S.W.3d 257 (Tex. App.-- San Antonio 2016, pet.

denied), held that a plaintiff could not sustain a claim under the TPPCA when it was undisputed that the insurer had paid the appraisal award.

C. What's next, procedurally?

The Supreme Court reversed and remanded the case to the trial court, holding that neither party was entitled to summary judgment. Because the Court did not decide whether Section 542.060 or Section 560.058 of the Texas Insurance Code applies, it specifically gave the parties "the opportunity to present argument as to the applicable TPPCA standard" for the trial court to consider. This is one of the battlegrounds on remand.

But before these issues are hashed out on remand, State Farm will move for rehearing.

II. Holding One: Appraisal payments do not absolve insurers of liability under the TPPCA as a matter of law.

A. *Breshears* and its progeny were expressly disapproved.

The *Breshears* line of cases created a scheme whereby insurers could weaponize the appraisal process as a liability avoidance device rather than a dispute resolution mechanism. Under this line of cases, insurers could – and frequently did – invoke the appraisal process long into either litigation or the claims process and enjoyed full immunity for any prior delays. The Supreme Court clearly and unequivocally ended that practice in *Barbara Technologies.*

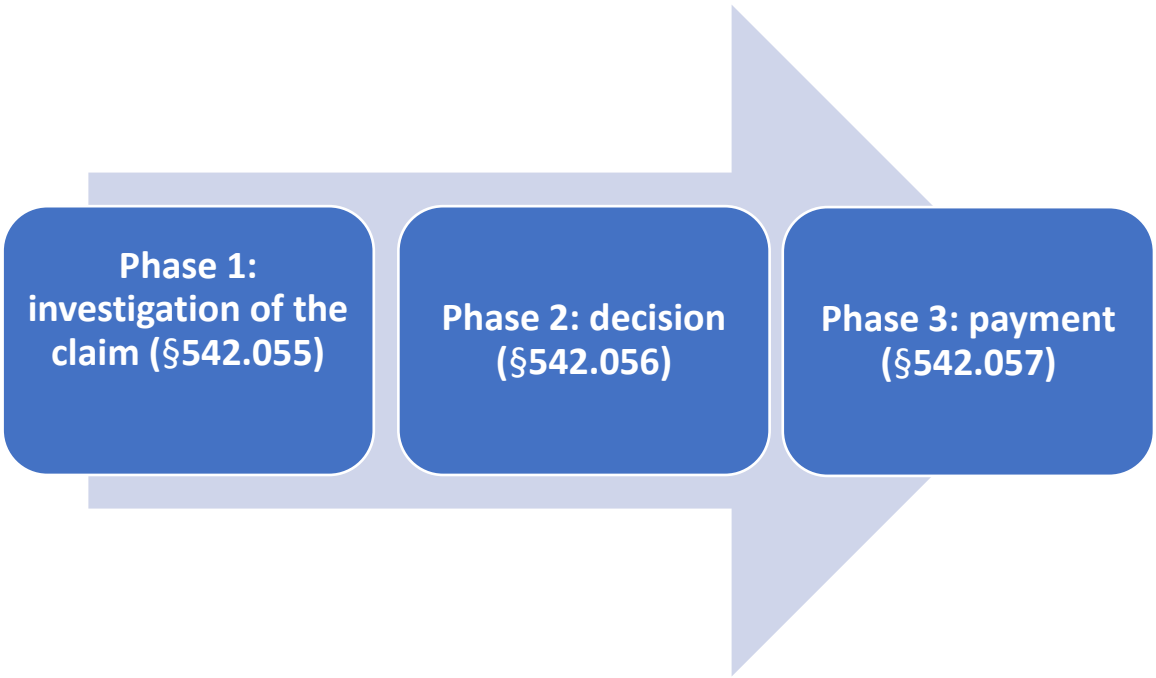
Namely, the Court overruled *Breshears,* as well as *Garcia,* to the extent those opinions "could be read to excuse an insurer liable under the policy from having to pay TPPCA damages merely because it tendered payment based on an appraisal award, or to foreclose any further proceedings to determine the insurer's liability under the policy." 2019 Tex. LEXIS 687, at *26. State Farm had cited those opinions to support the proposition that "full and timely payment of an appraisal award precludes an insured from recovering damages under the TPPCA as a matter of law." *Garcia,* 514 S.W.3d at *23. The Court focused on statutory language; and, in reviewing the text of Chapter 542 at a granular level, the majority explained there is no exception or extension to TPPCA prompt payment deadlines for appraisal.

B. Language and phases of the TPPCA

Much of the Supreme Court's opinion in *Barbara Technologies* was devoted to a detailed analysis of the statutory structure and provisions of the TPPCA. The TPPCA outlines a series of steps, phases, and deadlines that track and govern the claims process in practice and penalties for non-compliance. The integrity of the TPPCA is vitally important to the orderly and efficient resolution of insurance claims in Texas. Anyone desiring to understand the importance and relevance of a clear statutory claims structure need only visit jurisdictions where a similar statute is lacking, for example Puerto Rico, where a mass of Hurricane Maria claims remain unresolved two years after the storm.

Yet, the cases leading up to *Barbara Technologies* and State Farm's argument on appeal sought to butcher the clear terms of the TPPCA with the objective of enlarging the statute's timeframes for the appraisal process. The arguments were not supported by the statutory text, as there simply is no exception to the deadlines for appraisal. Nor would such an exception be consistent with the core principle underpinning the TPPCA – that the insurer, rather than the insured, must bear the cost of delay – organic or manmade – inherent in a demonstrably "adversarial" claims process.[1]

An understanding of the basic requirements of the TPPCA is key to a full understanding of the Court's holding. Sections 542.055 through 542.059 of the TPPCA govern the procedures for notice and response, and describe how the claims process actually works in practice. The TPPCA can be broken down into three basic steps after a policyholder provides notice of a claim:



Steps of the Process Under the TPPCA

Phase One – investigation. Upon being placed on notice of a claim, an insurer must promptly commence an investigation and request from the claimant the information it requires. TEX. INS. CODE § 542.055. First, the insurer must acknowledge receipt of the claim. § 542.055(a)(1). Next, the insurer must commence an investigation of the claim. § 542 .055(a)(2). As part of that investigation an insurer "shall" request "***from the claimant*** all items, statements, and forms that

[1] As the Supreme Court noted, "the insurance claim process is inherently adversarial. The adversarial process begins as soon as a claim is filed and ends only when the resolution of the claim is finally determined and accepted by the parties. The TPPCA governs the insurer's request for necessary information, investigation, and evaluation of the claim, which then allows the insurer to accept and pay, or reject the claim. The appraisal process, as an agreed-upon mechanism for dispute resolution provided by the parties' insurance policy, is also part of the adversarial process; however, it exists to allow the insurer and insured to resolve a dispute as to the value of the property or amount of loss, without having to submit to the time and expense of litigation." *Id.* at *19.

the insurer reasonably believes, at that time, will be required from the claimant." TEX. INS. CODE § 542.055(a)(3). This initial request for information from the claimant must be made during the first 15 days of the initial investigation period for the claim. If, however, the insurer believes it needs more information from the claimant, it may "make additional requests for information if ***during the investigation of the claim*** the additional requests are necessary." § 542.055(b). We'll come back to § 542.055(b) because this provision is where insurance industry advocates have sought to engraft an appraisal exception that simply does not exist in the statutory text.

Phase Two – decision. Utilizing the information gathered during the investigative phase outlined in § 542.055, the insurer is obligated under § 542.056 to promptly come to a decision. Specifically, within 15 days after the insurer receives all the information it needs from the claimant under Section 542.055, the insurer must make its decision either to reject or accept the claim and notify the claimant of the amount of loss under Section 542.056. If the 15-day time period is insufficient, the insurer can extend it by an additional 45 days by providing the claimant notice and stating the reasons for the additional time. The insurer must then commit its final decision to writing in the form of a proof of loss, or a denial letter if no payment is to be made. § 542.056. The decision phase provides a clear demarcation of the end of the investigative period and initiates the duty to pay.

Phase Three – payment. If the insurer decides there is a covered loss, the insurer must pay within five days after the § 542.056 decision notice. § 542.057.

The 60-day hard stop. To avoid confusion, the TPPCA contains an outer limit for an insurer to complete its investigation and pay. Under Section542.058, and unless an exception applies, the insurer must pay the claim within 60 days of receipt of the information provided during the § 542.055 investigative phase.

The Exceptions. Since the statute is modeled on the claims process in practice, it is laced with a series of practical, enumerated exceptions. A surplus lines insurer has 30 days instead of 15 to commence its investigation following notice. § 542.055(a), and it has 20 days instead of five to pay a claim following an acceptance decision. § 542.057(c). An insurer investigating a fire claim it reasonably believes may have resulted from arson has 30 days instead of 15 to provide notice of a claim decision. § 542.056(b). All deadlines in the subchapter are extended for a period of 15 days in the event of a weather-related catastrophe or natural disaster. § 542.059. There are other less relevant exceptions as well, and one common denominator: nowhere does the statute provide an extension or exception for the appraisal process.

The Penalties for Non-Compliance. The TPPCA contains a "shall pay" standard under § 542.058 for damages under the TPPCA. The "shall pay" standard under§ 542.058 references § 542.060, which in turn states an insurer "that is liable for a claim" and violates the TPPCA "is liable to pay" interest at either 18%, or in the event of a natural disaster claim under § 542A, a lesser interest rate; along with attorney's fees.

C. Appraisal is a dispute resolution tool and not part of the investigative process

Importantly, as the Supreme Court noted, "[n]owhere does the TPPCA mention appraisals or how invocation of an appraisal process affects the TPPCA's deadlines and requirements." The law does not provide "flex time" in the statute for appraisal, like it does for other situations, such as an arson claim, a surplus lines insurer, or a "catastrophe" claim. *See* TEX. INS. CODE §§ 542.055, .056(b), 059(b).

The argument proffered by the insurance industry for years was that the appraisal process is part of the investigative process under § 542.055. The Court essentially rejected this argument and found instead that appraisal is a contractual dispute resolution mechanism that takes place ***after*** the insurer makes its decision under Section 542.056. This temporal distinction is important, since the *Breshears* line of cases were underpinned on the theory that appraisal is part of the claims investigation, rather than a post-decision dispute resolution method.

In making this argument that appraisal was part of the investigation and not a dispute resolution method, State Farm and other industry participants hung their hats on the following provision:

> *"An insurer may make additional requests for information if during the investigation of the claim the additional requests are necessary."* 542.055(b).

As the argument goes, an appraisal is somehow a request for information during the investigation of the claim, so the deadlines do not commence until this "information" is received. Over a decade of now "disapproved" law and countless lawsuits and appellate opinions have flowed from this argument.

The Supreme Court made it clear that appraisal is a dispute resolution process that takes place after the investigation is complete and a claims decision is made. It is not a part of the investigative process itself. As we argued at the Supreme Court, it is only ***after*** the insurer receives all reasonably necessary information under Section 542.055(b), and ***after*** the insurer makes its decision to reject or accept the claim, that the parties could have a disagreement regarding the amount of loss and need to invoke the appraisal process. At that point, the pre-claims-decision provisions of Section 542.055(b) are no longer at issue. Section 542.055(b) does not contemplate that the insurer will need to request information after the claims decision has been made—especially not from third parties, like the appraisers—who are not part of the initial claims process.

As State Farm's contract language provided, "[i]f we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss." If the insurer had not yet made its Section 542.056 decision, there would be no disagreement, and no basis for appraisal. Once the claims process concludes through a Section 542.056 acceptance or rejection of the claim, the parties may resolve their dispute through the appraisal process should a dispute arise.

III. Holding Two: Appraisal payments do not automatically subject insurers to liability under the TPPCA.

The second significant holding in the case rejected the strict liability standard for TPPCA damages after appraisal, requiring the adjudication of an insurer's liability even when the insurer pays the appraisal award in full.

A. Court rejected our proffered strict liability standard under *Graber.*

We had argued that, under *Graber v. State Farm Lloyds,* State Farm took a risk that it would later be subject to TPPCA damages when it rejected the claim. *Barbara Techs. Corp.* 2019 Tex. LEXIS 687 at *29. *Graber* held the TPPCA holds insurers "strictly liable" for their failure to promptly pay claims where liability has been established and that an insurer's "full and timely payment of the appraisal award does not preclude Plaintiff's claim for statutory interest under the [Act] as a matter of law." *Graber v. State Farm Lloyds*, No. 3:13-CV-2671-B, 2015 U.S. Dist. LEXIS 77361, 2015 WL 3755030, at *10 (N.D. Tex. June 15, 2015) (footnote omitted).

We had argued that by paying the appraisal award far later than the TPPCA requires, State Farm was strictly liable. The Court rejected this argument.

B. The Court did not approve of the "shall pay" standard under § 542.058, but teed this question up on remand.

The Court devoted significantly less ink to our argument raised in Barbara Tech's summary judgment motion that State Farm was strictly under § 542.058 "because it failed to pay Barbara Tech's claim within § 542.058's sixty-day deadline, instead later paying after the appraisal." 2019 Tex. LEXIS 687, at *43. Nonetheless, the Court again made clear (as it had earlier in the opinion, in discussing Section 542.060) that the mere payment of the appraisal award, without more, was insufficient to trigger liability under § 542.058:

> We believe Barbara Tech's contention that the appraisal established that the claim was "due and owing" amounts to the same argument as "liable" under section 542.060, which we have already addressed. As explained above, payment of an appraisal award does not determine liability, and there has been no adjudication that State Farm was liable under the policy. Even if we were to read Barbara Tech's argument to be that State Farm is strictly liable under section 542.058—that is, any payment made after the sixty-day deadline subjects an insurer to TPPCA damages barring an adjudication that the claim is invalid and should not be paid—the result is no different. There has been no proceeding to consider the validity of the claim and whether State Farm should have paid it; as such, we cannot determine that Barbara Tech is entitled to TPPCA damages as a matter of law. Barbara Tech has not carried its burden on summary judgment to prove conclusively that the claim was "due and owing" or that it is entitled to TPPCA damages as a matter of law.

Id. at *49.

The Court left this question open on remand, stating, "to the extent that section 542.058 applies, State Farm will have the opportunity to argue that Barbara Tech's claim is invalid and should not have been paid, making it not subject to prompt pay damages under the TPPCA."

C. The "liable for the claim" standard under § 542.060.

In contrast to § 542.058, § 542.060(a) specifies that, "[e]xcept as [otherwise] provided . . ., if an insurer that is **liable for a claim under an insurance policy** is not in compliance with this subchapter, the insurer is liable to pay" the damages specified by this section. *Id.* at *27-28; TEX. INS. CODE § 542.060(a) (emphasis added). The Court zeroed in on this "liable for a claim" language, and held that an insurer cannot be "liable" for a claim within the meaning of § 542.060 "until it (1) has completed its investigation, evaluated the claim, and come to a determination to accept and pay the claim or some part of it; or (2) been adjudicated liable by a court or arbitration panel." *Id.* at *28.

This finding meant State Farm's payment of the appraisal award alone was insufficient to trigger liability under Section 542 because State Farm had never "accept[ed] the claim, thereby admitting liability," or been adjudicated liable by the Court. *Id.*

The Court also left open on remand the possibility for us to argue that "to the extent that section 542.060 applies, Barbara Tech will have the opportunity to argue that State Farm owed Barbara Tech benefits under the policy, was therefore 'liable' under the policy when it rejected the claim, and thus owes damages under the TPPCA." *Id.* at *49.

IV. Significance of the *Ortiz v. State Farm Lloyds* case decided the same day

It is important to recognize another case involving the payment of an appraisal award – this one involving claims under Section 541 of the Texas Insurance Code – was decided on the same day as *Barbara Technologies*. In *Ortiz v. State Farm Lloyds,* the Supreme Court held an insurer's payment of an appraisal award "bars the insured's breach of contract claim premised on failure to pay the amount of covered loss" and also bars the insured's "common law and [Section 541] claims to the extent the only actual damages sought are lost policy benefits."

This rationale followed the Court's recent decision in *USAA Texas Lloyds v. Menchaca,* 545 S.W.3d 479, 495 (Tex. 2018), which held that an insured "cannot recover policy benefits as actual damages for an insurer's statutory violation if the insured has no right to those benefits under the policy." Because the Court found Ortiz failed to show any evidence of "independent injury" (i.e., damages outside of the policy benefits), the Court held State Farm's payment of the appraisal award extinguished Ortiz's claims under Section 541. Namely, the Court rejected Ortiz's argument that his pursuit of "attorney's fees and costs incurred" in the lawsuit sufficed as an "independent injury" under *Menchaca* that would allow him to pursue his Section 541 claim even after appraisal.

Importantly, the Court in *Ortiz,* citing its holding in *Barbara Technologies,* reversed and remanded the case on Ortiz's TPPCA claim, which the trial court had dismissed based on State Farm's payment of the appraisal award. So, although the Court's holding in *Ortiz* did some damage to the

viability of certain Section 541 claims after payment of an appraisal award, it did not affect the viability of TPPCA claims, consistent with *Barbara Technologies.*

In short, *Ortiz* (1) followed *Barbara Technologies* on Section 542 claims, but (2) followed *Menchaca* on Section 541 claims. This means claims under Section 541 and for breach of the duty of good faith and fair dealing under Texas common law still face significant hurdles in the appraisal context. We anticipated this result, which is why we nonsuited all claims except our Section 542 claims at trial.

V. The impact of *Barbara Technologies.*

When evaluating the potential effects of the *Barbara Technologies* decision, it is important to keep in mind the sequence of events in that case. State Farm initially rejected the claim within three weeks of Barbara Tech filing it, as falling under the deductible. After a second inspection revealed no further damage, Barbara Tech then filed suit. As Justice Boyd's concurrence noted, State Farm did not invoke appraisal until more than five months after Barbara Tech filed suit. And it did not pay the appraisal award until "659 days after completing its investigation and rejecting the claim." Shortly thereafter, the carrier paid the $195,345.63, which – as recognized by Judge Boyd's concurrence – was more than "sixty-five times the amount State Farm had found before rejecting the claim."

A. "Doomsday" appraisal scenarios appear to be hyperbole.

Justice Hecht, in dissent, says the majority's decision "certainly discourages use of appraisals, at least by insurers, and may effectively doom the process altogether." Some insurance industry advocates have latched onto this viewpoint, clamoring that there will be a "rush to the courthouse in every post-appraisal matter." Some policyholder lawyers have unfortunately fed the fire with social media posts misinterpreting – or flatly misstating holdings from – the opinion.

Neither of these extreme positions is accurate. First, given the relatively unusual factual scenario of *Barbara Technologies*, it is extremely unlikely the same facts will manifest again, as some have predicted. Recall that appraisal in *Barbara Technologies* was not invoked until **after** suit was already filed, and **after** State Farm had twice rejected the claim in its entirety, and the appraisal award was **a 65-times increase** over the amounts admitted by State Farm. Second, the key language from the majority opinion makes clear appraisal is simply a mechanism to adjudicate **value of loss,** and has no bearing on liability under the TPPCA:

> Use of a policy's appraisal process to resolve a dispute as to the value of loss—that is, the amount of benefits the insured would be entitled to under the policy if the insurer were determined liable for the claim—and payment based on the appraisal has no bearing on the TPPCA's payment deadlines or enforcement of those deadlines.

Id. at *34. Nothing in the Court's opinion stated or even suggested that every time an insurer invokes appraisal, this is an invitation to *later* file suit under the TPPCA.

B. Justice Boyd's concurring opinion adopted many of our arguments and illustrates some of the confusion we face on remand.

Justice Boyd, concurring, concluded that, "State Farm conceded liability and validity by voluntarily and unconditionally paying the claim." *Id.* at *70 (Boyd, J., concurring). He then stated that regardless of whether the "liability" language of Section 542.060 (as we argued) or the "shall pay" language of § 542.058 applies, there was no need to remand because State Farm would be liable for damages under the TPPCA. As both the majority and Justice Boyd recognized, State Farm could have "continued to reject the claim" even after the appraisal award was determined. But it did not. Indeed, "State Farm cannot now argue that the claim it has voluntarily and unconditionally paid should not have been paid at all." *Id.* at 75.

C. Which standard applies as between Sections 542.058 and 542.060?

After a lengthy discussion about Sections 542.058 and 542.060, the Court nonetheless held "we do not opine on whether Section 542.060's liability requirement applies to a claim for TPPCA damages based on late payment under section 542.058." *Id.* at *39. The issue is thus open on remand.

We argued that Section 542.060 and its "liable for a claim" language should apply to determine damages under the TPPCA. On the other hand, Section 542.058 and its requirement that a claim be "due and owing" may also apply. This is closer to the strict liability standard found in the *Graber* case.

On remand, the majority invited us to argue that if Section 542.060 applies as the applicable standard for determining liability, "State Farm owed Barbara Tech benefits under the policy, was therefore 'liable' under the policy when it rejected the claim, and thus owes damages under the TPPCA." In turn, it invited State Farm to argue, to the extent Section 542.058 applies, "that Barbara Tech's claim is invalid and should not have been paid, making it not subject to prompt pay damages under the TPPCA."

It is difficult to envision how State Farm can successfully argue on remand that Barbara Tech's claim was "invalid and should not have been paid" after State Farm paid the appraisal award. It had the option to continue to deny the claim, but did not.

D. The Court noted the various factual scenarios that may manifest in an appraisal situation.

The Court's footnote 12 contemplated three factual scenarios that may realistically occur in the appraisal context, and cautioned that its holding only applies to one such scenario:

> Even after acknowledging receipt of the claim, investigating it, and then rejecting the claim (that is, denying liability), an insurer may later choose to accept the claim, admitting liability under the policy. For example, if a contractual appraisal provision such as the one

> in this case is invoked after the insurer has received all information requested from the claimant, conducted an investigation, and rejected the claim, the insurer may choose to: **(1) refuse to pay the appraisal amount and maintain its denial of liability for the claim; (2) pay the appraisal amount without accepting liability; or (3) accept the claim, essentially admitting it was incorrect to deny liability initially, and then pay the claim in accordance with the appraisal amount.** If the insurer chooses the third option, it becomes liable for the claim despite its earlier rejection of the claim, and it will be subject to TPPCA damages for failure to pay within the applicable TPPCA deadlines. See Tex. Ins. Code §§ 542.056(a), .057(a), .058, .060. If the insurer chooses the first option, refusing to pay an appraisal amount and continuing to deny liability, the insured could choose to pursue litigation. And if the litigation resulted in a judgment that the insurer was in fact liable on the claim, the insurer would then owe the amount of the claim, as fixed by the binding appraisal, and TPPCA damages if the insurer failed to pay the claim timely in accordance with section 542.058. See id. §§ 542.058, .060. **This opinion addresses only the second option, as those are the facts of the case before us.**

Id. at * 34, n.12 (emphasis added). This casts further doubt upon the scenarios predicted by various participants, as noted above.

E. The common "appraise and abate" delay tactic should meet its extinction in cases alleging valid TPPCA violations.

Another positive takeaway from the *Barbara Technologies* decision is that it should reduce, or altogether eliminate, the "appraise and abate" delay tactic we frequently see. That is, insurers sometimes move to compel appraisal –as in *Barbara Technologies,* many months into litigation – and, in the same breath, ask the court to abate the case while appraisal is pending, thus injecting months upon months of delay into an already elongated process. Of course, since the Supreme Court has now held that payment of an appraisal award does eliminate the possibility of a TPPCA claim, then it logically follows that any pending TPPCA claims do not depend on an appraisal award and must continue to be litigated.

VI. Conclusion

While an important contractual dispute resolution mechanism, in practice appraisal has been extensively misused in Texas, to the point where policyholders and insurers alike often lose confidence in the process. If appraisal is to remain a viable dispute resolution mechanism in which all parties to an insurance contract can have confidence, a comprehensive evaluation is in order. But *Barbara Technologies* is at least a good start. The elimination of some improper practices should accelerate the time and efficiency of resolving claims and add a measure of integrity into the appraisal process, to the benefit of both insurers and policyholders.